

REMARKS

Claims 1, 10, 13, 29, and 36-46 are pending in the case. Claims 2-9, 11-12, 14-28, and 30-35 are canceled above for cost containment. Claims 36-46 are added by amendment above.

The Office Action rejected each of claims 1-35 on various grounds. More particularly, the Office Action rejected:

- claims 29-35 under 35 U.S.C. §112, ¶2 for lack of antecedent basis as to two limitations;
- claims 1, 3-6, 11-13, 15-20, 24-26 and 28-32 as anticipated under 35 U.S.C. §102(e) by U.S. Letters Patent 6,944,474 (“Rader, *et al.*”);
- claims 1-6, 10, 11, 13-20 and 24-32 as anticipated under 35 U.S.C. §102(e) by U.S. Letters Patent 7,110,951 (“Lemelson, *et al.*”);
- claims 7-9, 21-23 and 33-35 as obvious under 35 U.S.C. §103(a) over Lemelson in view of U.S. Letters Patent 5,550,923 (“Hotvet”).

Applicants traverse each of the rejections.

I. INFORMALITIES

The Office Action did not indicate whether the drawings were accepted. In the absence of an objection to the drawings, Applicants presume that the drawings are suitable for present purposes and requests notification if the contrary is true.

II. RESPONSE TO SUBSTANTIVE MATTERS

A. CLAIMS 29 IS DEFINITE AS AMENDED

The Office Action rejected claims 29-35 under 35 U.S.C. §112, ¶2 for lack of antecedent basis as to two limitations. More particularly, the two limitations in claim 29 were alleged to lack proper antecedent bases. Claim 29 has been amended to remedy the lack of antecedent basis for the cited limitations. Applicants note that the amendments do not narrow the scope of the claims.

B. CLAIMS 1, 13, 29 AND 36-46 ARE NOVEL OVER RADER, ET AL.

The Office Action rejected claims 1, 3-6, 11-13, 15-20, 24-26 and 28-32 as anticipated under 35 U.S.C. §102(e) by U.S. Letters Patent 6,944,474 (“Rader, *et al.*”). An anticipating reference, by definition, must disclose every limitation of the rejected claim in the same relationship to one another as set forth in the claim. M.P.E.P. § 2131; *In re Bond*, 15 U.S.P.Q.2d (BNA) 1566, 1567 (Fed. Cir. 1990). Rader *et al.* fails to meet this standard with respect to the original claims as amended and the new claims.

Each of the independent claims now recites a limitation not taught or suggested by Rader *et al.* More particularly:

- claims 1, 13, and 29 recite some variation of the authentication of a user identification;
- claim 38 recites “receiving data indicative of a detected acoustic test signal”; and
- claim 42 recites “receiving data associated with... a device profile”.

Each of the dependent claims incorporates one or more of these limitations from the independent claims from which they depend. 35 U.S.C. §112, ¶4.

Applicants respectfully submit that Rader *et al.* does not teach these limitations. Applicants’ review of Rader does not show any teaching or suggestion of user authentication or using a device profile. The limitation of an “acoustic test signal” appeared in some dependent claims earlier, and the Office Action alleged that Rader *et al.* teaches such a limitation in col. 3, at lines 10-14. However, it is clear from that passage that Rader *et al.* is teaching a signal used to test the hearing of a user. Such a signal is “heard” by the user, not “detected.” It is clear from Applicants’ disclosure that the “acoustic test signal” is detected by an electro-mechanical transducer and is not used in a hearing test. Thus, Rader *et al.* does not teach a “detected acoustic test signal.”

Accordingly, Rader *et al.* fails to disclose every limitation of the rejected claim in the same relationship to one another as set forth in the claims. Rader *et al.* therefore does not anticipate any of claims 1, 13, 29, and 36-46. M.P.E.P. § 2131; *In re Bond*, 15 U.S.P.Q.2d (BNA) 1566, 1567 (Fed. Cir. 1990). Wherefore, Applicants respectfully submit that the rejections be withdrawn.

**C. CLAIMS 1, 10, 13, 29 AND 36-46
ARE NOVEL OVER LEMELSON, ET AL.**

The Office Action rejected claims 1-6, 10, 11, 13-20 and 24-32 as anticipated under 35 U.S.C. §102(e) by U.S. Letters Patent 7,110,951 (“Lemelson, *et al.*”). .”). An anticipating reference, by definition, must disclose every limitation of the rejected claim in the same relationship to one another as set forth in the claim. M.P.E.P. § 2131; *In re Bond*, 15 U.S.P.Q.2d (BNA) 1566, 1567 (Fed. Cir. 1990). Lemelson *et al.* fails to meet this standard with respect to the original claims as amended and the new claims.

As with Rader *et al.*, each of the independent claims now recites a limitation not taught or suggested by Lemelson *et al.* More particularly:

- claims 1, 13, and 29 recite some variation of the authentication of a user identification;
- claim 38 recites “receiving data indicative of a detected acoustic test signal”; and
- claim 42 recites “receiving data associated with... a device profile”.

Each of the dependent claims incorporates one or more of these limitations from the independent claims from which they depend. 35 U.S.C. §112, ¶4.

Applicants respectfully submit that Lemelson *et al.* does not teach these limitations. Applicants’ review of Lemelson does not show any teaching or suggestion of user authentication or using a device profile. The limitation of an “acoustic test signal” appeared in some dependent claims earlier, and the Office alleged that Lemelson *et al.* teaches such a limitation in the disclosure of element 26 in Figure 2 thereof. This element is labeled “Hearing Test”. So, like Rader *et al.*, it is clear that Lemelson *et al.* is teaching a signal used to test the hearing of a user. This is confirmed in the specification in col. 11, at lines 1—25. Such a signal is “heard” by the user, not “detected.” It is clear from Applicants’ disclosure that the “acoustic test signal” is detected by an electro-mechanical transducer and is not used in a hearing test. Thus, Lemelson *et al.* does not teach a “detected acoustic test signal.”

Accordingly, Lemelson *et al.* fails to disclose every limitation of the rejected claim in the same relationship to one another as set forth in the claims. Lemelson *et al.* therefore does not anticipate any of claims 1, 10, 13, 29, and 36-46. M.P.E.P. § 2131; *In re Bond*, 15 U.S.P.Q.2d (BNA) 1566, 1567 (Fed. Cir. 1990). Wherefore, Applicants respectfully request that the rejections be withdrawn.

D CLAIMS 7-9, 21-23 AND 33-35 ARE UNOBVIOUS

OVER LEMELSON IN VIEW OF HOTVET

The Office Action rejected claims 7-9, 21-23 and 33-35 as obvious under 35 U.S.C. §103(a) over U.S. Letters Patent 7,110,951 ("Lemelson, *et al.*") in view of U.S. Letters Patent 5,550,923 ("Hotvet"). Each of these claims has been canceled. These rejections are therefore moot.

III. CONCLUDING REMARKS

Applicants therefore respectfully submit that the claims are in condition for allowance, and requests that the rejections be withdrawn and the claims be allowed to issue. The Examiner is invited to contact the undersigned attorney at (713) 934-4053 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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